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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/898,732 | 07/03/2001 | Lendy Dunaway | DUN001 | 2418 |

25962 7590 08/14/2003

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| EXAMINER |
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BECKER, DREW E

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| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 08/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/898,732

Applicant(s)

DUNAWAY, LENDY

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 18-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-17, drawn to a food container, classified in class 426, subclass 120.
 - II. Claims 18-23, drawn to a method of forming a container, classified in class 53, subclass 410.
 - III. Claims 24-25, drawn to a method of dispensing food, classified in class 222, subclass 1.
 - IV. Claims 26-28, drawn to a canister, classified in class 206, subclass 217.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product of group I as claimed can be made by another and materially different process, for instance without forming first and second sections.

3. Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different

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process of using that product (MPEP § 806.05(h)). In the instant case the process of group III as claimed can be practiced with another materially different product, for instance a product without a first coupling region located opposite a first opening or a second coupling region opposite a second opening, or a product without a lid or flap, or a product without resealable openings.

4. Inventions IV and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination of group IV as claimed does not require the particulars of the subcombination of group I as claimed because it does not require first and second coupling regions which are opposite from first and second access regions. The subcombination of group I has separate utility such as a container without a connector.

5. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case group II is directed to a method of forming a container, while group III is directed to a method of dispensing food.

6. Inventions II and IV are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2)

that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product of group IV as claimed can be made by another and materially different process, for instance with the added step of forming a connector.

7. Inventions III and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product of group IV as claimed can be used in a materially different process, for instance without moving seals and extracting first and second portions of first and second foods.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

9. Because these inventions are distinct for the reasons given above and the search required for group I is not required for group II, which is not required for group III, which is not required for group IV; restriction for examination purposes as indicated is proper.

10. During a telephone conversation with Brian A. Carlson on July 28, 2003 a provisional election was made without traverse to prosecute the invention of group I, claims 1-17. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 18-28 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-5, 12, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin [Pat. No. 5,535,889].

Lin teaches a cylindrical food container comprising a first compartment with a coupling region and a resealable cap forming an access region (Figure 1, #1, 13, 111), a second compartment with a coupling region and a resealable cover forming an access region (Figure 1, #2-3, 211), the first opening being located at the top and the second opening being located at the bottom (Figure 1, #13 & 3), foods within the compartments which are conformable as well as dry and rigid (column 1, lines 11-14), and the compartments being separate and modular (Figure 1, #1-2).

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13. Claims 1-3, 5-7, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Lowry [Pat. No. 6,092,717].

Lowry teaches a cylindrical food container comprising a first compartment with a lower coupling region and an upper access region (Figure 2, #16), a second compartment with an upper coupling region and a lower access region (Figure 2, #18), resealable lids (Figure 1, #24 & 26), disposable lids (Figure 1, #28), and foods within the compartments (Figure 2, C).

14. Claims 1-3, 5, 8, 11, 13, and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kopp [Pat. No. 3,144,152].

Kopp teaches a cylindrical food container comprising a first compartment with a lower coupling region and an upper access region (Figure 4, #14), a second compartment with an upper coupling region and a lower access region (Figure 4, #16), foods within the compartments (Figure 5, #23), a resealable cap (Figure 4, #46), hinged flaps (Figure 6, 36'), and partitions forming multiple chambers within the compartments (Figures 2-3, #26 & 34).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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16. Claims 8-10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin as applied above, in view of Narsutis et al [Pat. No. 5,945,145].

Lin teaches the above mentioned components. Lin also teaches a rotative sleeve (Figure 1, #22). Lin does not teach a movable flap of resealable adhesive tape. Narsutis et al teach a food package comprising a flap of resealable adhesive tape (Figure 2, #30). It would have been obvious to one of ordinary skill in the art to incorporate the resealable flap of Narsutis et al into the invention of Lin since both are directed to food containers, since Lin already included resealable openings (Figure 1, #13 & 3), and since the resealable adhesive flap of Narsutis et al would have provided a better hermetic seal which would have preserved the food longer.

17. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lin as applied above, in view of Wright [Pat. No. 5,630,523].

Lin teaches the above mentioned components. Lin does not teach a spout. Wright teaches a food container with a spout (Figure 1, #14). It would have been obvious to one of ordinary skill in the art to incorporate the spout of Wright into the invention of Lin since both are directed to food containers, since Lin already included a compartment for liquids (Figure 1, #1), and since the spout of Wright would have permitted easier pouring of liquids.

18. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kopp as applied to above, in view of Ness [Pat. No. 5,588,561]

Kopp teaches the above mentioned components. Kopp does not teach a compressible compartment. Ness teaches a food container comprising a compressible compartment

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(Figure 2; column 3, lines 41-49). It would have been obvious to one of ordinary skill in the art to incorporate the compressible compartment of Ness into the invention of Kopp since both are directed to food containers, since Kopp already included multiple compartments and chambers (Figures 1-10), and since the compressibility of Ness permitted one-hand usage of the container (column3, lines 41-49).

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cadigan [Pat. No. 1,064,442], Powell [Pat. No. 2,909,304], Fohrman [Pat. No. 3,485,416], Grenell [Pat. No. 4,444,324], Kalberer et al [Pat. No. 4,830,273], Ours et al [Pat. No. 6,264,068], Fellers [Pat. No. 6,398,071], Yu [Pat. No. 5,279,841], Kendrick [Pat. No. 880,082], and Benavides et al [Pat. No. 6,158,623] teach food containers with multiple compartments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

A handwritten signature in black ink, appearing to read "Drew E. Becker", with a long, sweeping horizontal line extending to the right.

Drew E Becker
Examiner
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August 4, 2003